

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

RICHARD TORRES,

Petitioner,

vs.

R.T.C. GROUNDS, Warden,

Respondent.

Case No: C 13-3312 SBA

**ORDER DENYING PETITIONER'S  
MOTION FOR LEAVE TO AMEND  
PETITION; GRANTING  
RESPONDENT'S MOTION TO  
DISMISS PETITION; AND  
DENYING CERTIFICATE OF  
APPEALABILITY**

Petitioner, a state prisoner, filed the instant pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, to challenge prison discipline imposed by Pelican Bay State Prison ("PBSP"). According to Petitioner, he was issued a Rules Violation Report ("RVR") on October 8, 2011, and charged with Willfully Delaying/Obstruction of a Peace Officer (i.e., a hunger strike). On November 3, 2011, a disciplinary hearing was held regarding the RVR. Petitioner was found guilty, and assessed a 90-day forfeiture of conduct credits and a 30-day loss of privileges.

In this proceeding, Petitioner claims that the disciplinary findings violated his right to due process because they are not based on "some evidence." Dkt. 1 at 10 (citing Superintendent v. Hill, 472 U.S. 445, 454 (1985) (revocation of good-time credits does not comport with minimum requirements of procedural due process unless disciplinary findings supported by "some evidence"). The Court ordered Respondent to show cause as to the due process claim.

This matter is now before the Court on Respondent's motion to dismiss the petition as moot and for lack of habeas jurisdiction. Dkt. 7. Petitioner filed an opposition, and Respondent filed a reply. Dkts. 9, 10.

Also before the Court is Petitioner's motion for leave to amend the petition. Dkt. 11. Respondent has filed an opposition to Petitioner's motion. Dkt. 12.

For the reasons outlined below, Petitioner's motion for leave to amend is DENIED, and Respondent's motion to dismiss is GRANTED.

**I. DISCUSSION**

**A. PETITIONER'S MOTION FOR LEAVE TO AMEND PETITION**

Petitioner seeks leave to add a new claim challenging another incident involving prison discipline imposed by PBSP. Petitioner alleges that he was issued another RVR on July 23, 2013 for Willfully Delaying/Obstruction of a Peace Officer (i.e., a hunger strike). A disciplinary hearing was held on August 23, 2013, at which Petitioner refused to appear. The hearing officer proceeded in Petitioner's absence, and upon consideration of the evidence presented, found him guilty as charged. He was assessed a 61-day credit forfeiture. See Dkt. 11 at 6-7. Petitioner alleges the disciplinary findings at his August 23, 2013 disciplinary hearing violated his right to due process because they were not based on "some evidence." Dkt. 11 at 2, 5 (citing Hill, 472 U.S. at 454).

Petitioner's motion for leave to amend does not comply with the Court's Civil Local Rules because he failed to provide a copy of the proposed pleading, as required by Civil Local Rule 10-1. The failure to comply with the Local Rules, standing alone, warrants the denial of Petitioner's motion. Tri-Valley CARES v. U.S. Dept. of Energy, 671 F.3d 1113, 1131 (9th Cir. 2012) ("Denial of a motion as the result of a failure to comply with local rules is well within a district court's discretion.").

Even if the motion were properly presented, the proposed inclusion of a new claim based on a separate disciplinary hearing is improper. A petitioner may only challenge one state court judgment in a single federal habeas petition. See Rule 2(e), 28 U.S.C. foll. § 2254 ("[a] petitioner who seeks relief from judgments of more than one state court must file a separate petition covering the judgment or judgments of each court."); Goff v. Salinas, No. 2:11-cv-3251 WBS AC P, 2013 WL 943438, \*2 (E.D. Cal. Mar. 11, 2013)

1 (dismissing a habeas petition which challenged two separate disciplinary hearings).

2 Accordingly, to the extent Petitioner seeks to challenge the August 23, 2013 disciplinary  
3 hearing, he must do so in a separate action. In addition, there is no indication that  
4 Petitioner has exhausted his administrative remedies in connection with his proposed new  
5 claim.

6 Accordingly, Petitioner's motion for leave to amend the Petition is DENIED without  
7 prejudice to Petitioner presenting such a claim in a new petition, provided that he has first  
8 has exhausted his administrative remedies.

9 **B. MOTION TO DISMISS**

10 **1. Background**

11 Petitioner is serving an indeterminate sentence for his 1995 convictions for murder  
12 and attempted first degree murder with a firearm enhancement. Dkt. 7, Ex. 1. As noted,  
13 Petitioner was found guilty of a 2011 RVR for participating in a hunger strike and was  
14 assessed a 90-day forfeiture of conduct credits and a 30-day loss of privileges. Dkt. 7, Exs.  
15 2, 3. On July 3, 2012, PBSP prison officials restored all of Petitioner's forfeited credits  
16 after he refrained from committing additional disciplinary violations for a six-month period.  
17 Dkt. 7, Ex. 4; Cal. Code Regs. tit. 15, § 3328(b). In addition, all of Petitioner's custodial  
18 privileges were reinstated.

19 After exhausting his administrative remedies, Petitioner challenged the prison  
20 disciplinary decision by filing petitions for writ of habeas corpus in the state courts, all of  
21 which were denied. Dkt. 7, Exs. 5-10. Thereafter, he filed the instant petition alleging that  
22 the 2011 disciplinary finding violated his right to due process because it was not supported  
23 by "some evidence." Dkt. 1 at 10

24 **2. Analysis**

25 Article III, § 2, of the Constitution requires the existence of a "case" or  
26 "controversy" through all stages of federal judicial proceedings. This means that,  
27 throughout the litigation, the plaintiff "must have suffered, or be threatened with, an actual  
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1 injury traceable to the defendant and likely to be redressed by a favorable judicial  
2 decision.” Lewis v. Continental Bank Corp., 494 U.S. 472, 477 (1990). A case becomes  
3 moot “when the parties lack a legally cognizable interest in the outcome.” Johnson v.  
4 Rancho Santiago Comm. Coll. Dist., 623 F.3d 1011, 1020 (9th Cir. 2010) (citations  
5 omitted). “[A] dispute solely about the meaning of a law, abstracted from any concrete  
6 actual or threatened harm, falls outside the scope of the constitutional words ‘Cases’ and  
7 ‘Controversies’.” Alvarez v. Smith, 130 S. Ct. 576, 580-81 (2009) (citations omitted).

8 An incarcerated convict’s (or a parolee’s) challenge to the validity of his conviction  
9 satisfies the case-or-controversy requirement, because the incarceration (or the restrictions  
10 imposed by the terms of the parole) constitutes a concrete injury, caused by the conviction  
11 and redressable by the invalidation of the conviction. Spencer v. Kemna, 523 U.S. 1, 7  
12 (1998). Once the convict’s sentence has expired, however, some concrete and continuing  
13 injury other than the now-ended incarceration or parole—some “collateral consequence[]”  
14 of the conviction—must exist if the suit is to be maintained and not considered moot. Id.  
15 Continuing collateral consequences may be either proven or presumed. Id. at 8. However,  
16 the presumption of collateral consequences that is applicable to criminal convictions does  
17 not extend to prison disciplinary proceedings. Wilson v. Terhune, 319 F.3d 477, 481 (9th  
18 Cir. 2003).

19 Respondent contends that the instant petition should be dismissed as moot because  
20 the prison restored Petitioner’s 90 days of lost credits, and therefore there is no longer a  
21 case or controversy. Dkt. 7 at 3. Petitioner does not dispute that his credits have been  
22 restored. Rather, he argues that the matter is not moot because the rule violation remains in  
23 his file and has an adverse effect on his classification score or his ability to parole. Dkt. 9  
24 at 2, 5, 9. However, the Ninth Circuit has held that allegations that a rule violation finding  
25 will adversely affect the petitioner’s classification, institutional and housing assignments,  
26 privileges or may result in a delay or denial of parole, involve discretionary decisions that  
27 are too speculative to constitute sufficient proof of collateral consequences. Wilson, 319  
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1 F.3d at 481-82.

2 Even if Petitioner's claim were not moot, habeas jurisdiction is lacking. Federal  
3 habeas corpus jurisdiction is limited to claims that affect the fact or duration of  
4 confinement. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Therefore, "habeas  
5 jurisdiction is absent . . . where a successful challenge to a prison condition will not  
6 necessarily shorten the prisoner's sentence." Ramirez v. Galaza, 334 F.3d 850, 859 (9th  
7 Cir. 2003). Here, Petitioner alleges that Respondent violated his procedural due process  
8 rights on the ground that there was insufficient evidence to support a disciplinary finding of  
9 guilt. However, Petitioner cannot demonstrate that the disciplinary action affected the  
10 duration of his sentence because he ultimately did not lose any credits.

11 Accordingly, the Court finds that Respondent has demonstrated good cause for  
12 dismissing the petition, and therefore GRANTS the motion to dismiss.

13 **C. CERTIFICATE OF APPEALABILITY**

14 The federal rules governing habeas cases brought by state prisoners have been  
15 amended to require a district court that dismisses or denies a habeas petition to grant or  
16 deny a certificate of appealability ("COA") in its ruling. See Rule 11(a), Rules Governing  
17 § 2254 Cases, 28 U.S.C. foll. § 2254 (effective December 1, 2009). For the reasons stated  
18 above, Petitioner has not shown "that jurists of reason would find it debatable whether the  
19 district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484  
20 (2000). Accordingly, a COA is DENIED.

21 **II. CONCLUSION**

22 For the reasons set forth above,

23 IT IS HEREBY ORDERED THAT:

- 24 1. Petitioner's motion for leave to amend his petition (dkt. 11) is DENIED.  
25 2. Respondent's motion to dismiss petition (dkt. 7) is GRANTED, and the  
26 petition is DISMISSED.  
27 3. A certificate of appealability is DENIED. Petitioner may seek a certificate of  
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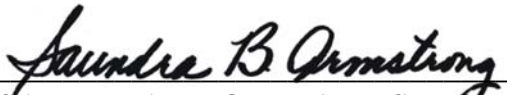
1 appealability from the Ninth Circuit Court of Appeals.

2 4. The Clerk of the Court shall enter judgment, terminate all pending motions,  
3 and close the file.

4 5. This Order terminates Docket Nos. 7 and 11.

5 IT IS SO ORDERED.

6  
7 Dated: September 26, 2014

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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